

**Senate Bill 467 (Johnson)**  
**Last-term fundraising**

**Version:** As Introduced, March 19, 2003

**Status :** In Senate Elections

**Hearing date:** April 30, 2003

**Purpose**

The bill would permit termed-out elected state officers to collect contributions after election to their last term of office for any purpose allowed under the Political Reform Act (the "Act")<sup>1</sup>. These contributions would be subject to the limits applicable to the legislator's most recent election.

**Background**

Proposition 34 added contribution limits and restrictions on post-election fundraising, but did not contain any specific provision for fundraising to pay expenses related to holding office. Under the Act, incumbent state officers may use campaign funds for any political, legislative or governmental purpose. (§89512) Expenses related to holding office are, generally, those for legislative or governmental purposes.

Proposition 34 prohibits elective state office candidates from accepting a contribution after the date of an election if that contribution exceeds the candidate's net debts outstanding from that election. (§85316) As a result, termed-out elective state officers do not have the ability to conduct post-election fundraising for officeholder expenses. In contrast, an elective state officer who has formed a committee for election to his or her next term of office may use funds in that committee to pay expenses associated with holding that office. This issue was highlighted during Commission consideration of regulations implementing Proposition 34. The Commission believed it lacked the statutory authority to allow last-term officeholder fundraising by regulation. It did, however, vote to sponsor legislation to create parity for termed-out legislators by allowing them to raise funds limited to expenses related to holding office. (December 2002 approval of Commission-sponsored legislative proposals.)

**Analysis**

The bill proposes to amend section 85316 of the Act, as follows (new language in italics):

“(a) A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

*(b) Notwithstanding subdivision (a), an elected state officer who is serving his or her last permitted term of office may accept contributions after the date of the election to the office presently held for the purpose of*

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<sup>1</sup> Government Code §§81000-91015. References are to the Government Code unless otherwise noted.

*paying expenses associated with holding office, or for any purpose authorized pursuant to Article 4 (commencing with Section 89510) of Chapter 9.5. A contribution made pursuant to this subdivision may not otherwise exceed the applicable contribution limits for that election. For an election held prior to January 1, 2001, a contribution made pursuant to this subdivision is subject to Sections 85301 and 85302.”*

This amendment is nearly identical to language that was included in the February 26, 2001, version of SB 34, that provided authority for termed-out officeholders to raise funds. This language was a controversial provision of SB 34 that attracted negative press coverage, and opposition from California Common Cause. This provision was removed from SB 34 on March 7, 2001.

Staff concerns. Staff has several concerns with the language of SB 467:

Should be limited to officeholder expenses. The language of SB 467 does not limit termed-out officeholders’ post-election fundraising to officeholder expenses. It states they may accept contributions after the date of the election for officeholder expenses, “*or for any other purpose authorized pursuant to Article 4 (commencing with Section 89510) of Chapter 9.5.*” As drafted these post-election contributions could be used for any permitted political, governmental, or legislative use. Staff believes the italicized language should be deleted so that termed out officeholders could only raise contributions for officeholder expenses.

A good time for other changes to §85316. In interpreting §85316, the a question arose whether the section required candidates to apply funds remaining after the election to debts from that election. Interpreting the section, the Commission and staff have stated that while it seems logical to use the remaining funds to pay down election debt, the section does not necessarily require a candidate to apply excess funds to debt. If the Commission desires, the author could be asked to amend the existing language to require candidates to repay debts with funds remaining after the election.

Additionally, in writing regulations related to §85316, the Commission determined that this section and the contribution limits imposed by Proposition 34 could not be imposed on committees formed for elections held prior to the relevant effective dates of the proposition because those elections had no “applicable contribution limit for that election.” As a result, the phenomenon of “over limit” fundraising has continued for some time after those effective dates. While the Commission staff has attempted to secure an author for legislation to impose an absolute limit on these “old committees,” these attempts have been unsuccessful. In addition, while Senator Johnson said in July of 2002 that he wished to carry legislation to impose limits on old committees, he later turned down the Commission’s request that he author such a bill.

Does SB 467 create a separate limit for officeholder expenses? The proposed language states that the funds raised by termed out officials for officeholder expenses may not exceed the applicable contribution limits for that election. Presumably this means that a contributor who gave the maximum contribution to a termed out legislator's most recent election could not donate more for officeholder funds. Staff recommends this be clarified to ensure that the bill does not create a separate limit, thus doubling the per-election contribution limits for last-term elective state officers.

An issue of urgency. Staff recommends that an urgency clause be added to SB 467 so that, upon its enactment, contributions to "pre-34" committees will be limited to what is allowed under our proposed new language.

Other clarification. The phrase "last permitted term of office" is unclear. A state elected official may pursue local office or another state office. It is recommended that the phrase read "last permitted term for that office."

### **Recommendation: Support if amended**

Because the Senate Elections Committee was scheduled to hear this bill on April 30<sup>th</sup>, the Chairman's subcommittee on legislation convened to give the Executive Director guidance to on this measure. As a result, the Executive Director wrote Senator Johnson asking that he amend the bill to delete the phrase "or for any purpose authorized pursuant to Article 4 (commencing with Section 89510) of Chapter 9.5.," and to clarify that contributions received under the new language be aggregated with other contributions for the last election. Although the letter explained that the Commission would support the bill amended in this manner, Senator Johnson rejected the Commission's request. The Commission will be asked at its May meeting to ratify this "support if amended" position.